

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

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|---|---|--------------------|
| KEVIN LAMONT WALKER, |) | |
| |) | |
| Petitioner, |) | |
| vs. |) | NO. CIV-10-0478-HE |
| |) | |
| UNITED STATES OF AMERICA, <i>et al.</i> , |) | |
| |) | |
| Respondents. |) | |

ORDER

Petitioner Kevin Lamont Walker, a federal prisoner appearing *pro se*, filed this action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Consistent with 28 U.S.C. § 636(b)(1)(B), the matter was referred for initial proceedings to Magistrate Judge Robert E. Bacharach, who has recommended that petitioner's claims be denied. Petitioner has objected to the Report and Recommendation, reasserting all grounds for relief except for the challenges to the conditions of his confinement.

The court has conducted a de novo review of petitioner's claims¹ and agrees with the magistrate judge that relief should be denied. Petitioner has not shown that the Bureau of Prisons erred when it commenced his revocation sentence on July 5, 2005. His claim that the trial court erred when it departed upward from the sentencing guidelines is not cognizable under § 2241 and petitioner also has not shown that the remedy under

¹*The claims have been presented in multiple pleadings, including Doc. Nos. 1, 8, 19, 73, 85, and 87.*

§2255 is inadequate.² Finally, petitioner's claim based on the trial court's alleged premature disposition of his § 3582 motion for sentence reduction is not properly asserted under §2241, as it does not involve the execution of petitioner's sentence or the validity of his conviction or sentence.³

In Grounds Five and Six of his objection petitioner argues he is entitled to additional jail-time credits. However, in a letter to the court filed on January 7, 2011, petitioner advised the magistrate judge that he was "not challenging jail credits." Doc. #73. As petitioner withdrew the issue of jail-time credits from consideration by the magistrate judge, the court will not review it now. *See United States v. Garfinkle*, 261 F.3d 1030, 1031 (10th Cir. 2001). (In this circuit, theories raised for the first time in objections to the magistrate judge's report are deemed waived.").

Accordingly, the court adopts the Report and Recommendation⁴ and denies petitioner's claims. Petitioner's motions for an evidentiary hearing [Doc. Nos. 41, 86] also are denied. The denial of habeas relief moots petitioner's motions for an immediate ruling [Doc. #54] and a preliminary injunction [#57].⁵

²*The court agrees with the magistrate judge that the petition should not be recharacterized as one seeking relief under § 2255.*


³*The magistrate judge also properly denied this claim on the merits.*

⁴*The adoption is with the corrections suggested by the respondents in their March 29, 2011, Notice to the court.*

⁵*The court has not considered Doc. #88, as it was not submitted to the magistrate judge for his review.*

IT IS SO ORDERED.

Dated this 27th day of April, 2011.



JOE HEATON
UNITED STATES DISTRICT JUDGE